

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1533-2009 (O&M)
Date of Decision: February 09, 2024

Raj Kumar through LRs
...Appellant

VERSUS

Partap Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sahil Gupta, Advocate
for the appellant.

Mr.Rajneesh Malhotra, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed the appellant-Raj Kumar (now pursued by his LRs), thereby, seeking enhancement of the compensation, as awarded by learned Motor Accident Claims Tribunal, on account of injuries sustained by him, in a motor vehicular accident.

The facts germane, to be noticed, are as follows:-

That, on 21.07.2006, at about 1.00 p.m., Raj Kumar along with his cousin Naresh Kumar, was coming from Dharuhera to Nandrampur Bass on scooter. When they reached near village Nandrampur Bass, an Eicher Tractor, being driven by respondent No.1-Partap Singh, in a rash and negligent manner and at a very high speed, struck against the claimant from

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front side, as a result whereof, he fell down and sustained multiple injuries. However, FIR was not registered. But anyhow, a criminal complaint No.109 dated 23.08.2006 filed by Naresh Kumar was registered and proved through PW-6 Inderjeet, Addl. Criminal Ahlmad.

To substantiate the manner and factum of accident, claimant Raj Kumar himself stepped into witness box as PW-4 and in his affidavit Ex.PW4/.B, had categorically stated about the manner of taking place of the accident and kind of injuries sustained by him. Besides the same, cousin of the appellant-claimant Raj Kumar, namely, Naresh Kumar, who was accompanying the injured, at the relevant time, had also deposed in consonance with the pleaded case of the manner of taking place of the accident, when he stepped into witness box as PW-1.

Furthermore, the claimant had also examined PW-2 Ajay Kmar, Medical Record Technician of Indian Spinal Injuries Centre, who had brought the MLR of Raj Kumar, which is Mark A and photocopy of discharge summary, which is Mark B. PW-3 Rakesh Kumar, Senior Technician, Medical Record Keeper, Indian Spinal Injuries Centre, Sector-C, Vasant Kunj, New Delhi, had brought the photostat copy of the record of Raj Kumar and proved, MLC, discharge summary, In-patient Bill, which are Ex.PW3/A to Ex.PW3/D. Besides the aforesaid, the claimant had examined PW-5 Dr.A.K.Saini, Medical Officer, General Hospital, Rewari, who deposed about examination of the injured-claimant by the medical board, for assessment of his disability and after examination, his disability was assessed to be 100%, on account of paraplegia. Ex.PW5/A is the original disability certificate. He also stated that such type of patients, usually get

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bed sores and continuously need specialized nursing care. In the cross-examination, the said witness had stated that paraplegia is permanent in nature and Paraplegia will definitely affect his earning capabilities.

Be it noted that the driver, owner and insurer of the offending vehicle, who had been saddled with the liability, to pay the compensation worked upon by learned Tribunal, as such, have not filed any appeal. The present appeal has only been filed by the appellant-claimant, for seeking enhancement of the compensation, as granted by learned Tribunal.

In the light of the same, at the very outset, learned counsel for the appellant-claimant has assiduously submitted that learned Tribunal had granted compensation only while taking into consideration the medical bills and on the count of 'pain and suffering'. He submits that various other counts have been given amiss, which ought to have been taken into consideration, while assessing the compensation. In fact, he submits that it was required on the part of learned Tribunal, to work upon the compensation by the multiplier method, while taking into consideration, the earnings of the claimant, as asserted in the claim petition and also considering the extent of his disability, which was 100%.

On the other hand, learned counsel for the insurance company has resisted the claim of the appellant-claimant. It is submitted that claimant-Raj Kumar had died during the pendency of the appeal and therefore, cause of action being personal to the injured, abates on his death, which was not caused due to the accident. At the maximum, it is submitted that legal heirs are only entitled to such compensation, which forms the part of the estate of the deceased. However, he submits that loss of salary, future

prospects, pain and suffering, along with attendant charges, do not form part of estate of the deceased. As such, he submits that the compensation already awarded is just and reasonable, which calls for no further enhancement.

Undisputedly, during the pendency of the appeal, Raj Kumar-injured had died. There are two applications filed for impleadment of LR's. It is pertinent to mention that at first instance, CM-24791-CII-2010 was filed, wherein, it was stated that Raj Kumar had died on 23.05.2010 and the said application was allowed vide order dated 30.09.2010. However, the names of the LR's were not reflected in the Memo of Parties, as ordered by this Court and subsequently, CM-94-CII-2024 was filed and the same was allowed on 11.01.2024. Thereupon, Amended Memo of Parties has come on record, which reveals about widow and two sons of deceased-Raj Kumar, having been impleaded as LR's of deceased.

Considering the fact of death of injured-Raj Kumar, during the pendency of the appeal, beneficial reference, at the very outset, is made to decision rendered by the Hon'ble Supreme Court in ***The Oriental Insurance Company Limited vs. Kahlon @ Jasmail Singh Kahlon, 2022 (13) SCC 494***, wherein, it was observed as herein given:-

“9. The Act is a beneficial and welfare legislation. Section 166(1) (a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives

cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.”

Furthermore, in the aforesaid judgment, also reference was made to *Umedchand Golcha vs. Dayaram, 2002(1) MPLJ 249*, wherein, it was observed that a claim for personal injuries will not survive on death of the injured, unrelated to the accident, but the legal representatives could pursue the claim for enhancement of the claim, for loss of the estate, which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It was also observed that it is trite that the income which a person derives compositely forms part of the expenditure on himself, his family and the savings go to the estate. The unforeseen expenses, as aforesaid, naturally have to be met from the estate causing pecuniary loss to the estate.

Also, reference was made to *Venkatesan vs. Kasthuri, 2014 ACK 1621*, wherein, the injured claimant preferred an appeal dissatisfied, but was

deceased during the pendency of the appeal and compensation came to be awarded under the Act for loss of estate keeping in mind the nature of the injuries, the treatment, the expenditure incurred and loss of income.

Furthermore, in *Kahlon's case (supra)*, various case law, dealing with the subject were traced and even, reference was made to decision rendered in *Parminder Singh vs. New India Assurance Co. Ltd. 2019(7) SCC 217*, wherein, the compensation, on the basis of complete loss of income, the percentage of disability, future prospects were granted, applying the relevant multiplier. Likewise, reference was made to *Kajal vs. Jagdish Chand, 2020(4) SCC 413*, where the injured was assessed as 100 percent disabled, considering all of which, compensation was awarded on the notional future prospects along with relevant multiplier and considering the same, in the case under consideration in the aforesaid case law, the loss of income to the injured, was assessed to be 75%. Moreover, also it was observed that in view of *Raj Kumar vs. Ajay Kumar, 2011(1) SCC 343*, there shall be no deduction towards personal expenses.

Ultimately, it was concluded, as herein given:-

“20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.”

21. However, the compensation under the head pain and suffering being personal injuries is held to be unsustainable and is disallowed.

XXX

Xx

Xx

XXX

At this juncture, it is pertinent to mention that in the case under consideration, in the aforesaid authority, being dissatisfied with the Award of Rs.1 lakh awarded by learned Tribunal, the claimant moved to the High Court, which enhanced the compensation to the extent of Rs.37,81,234/- while taking into account, the annual salary with future prospects, applying the multiplier of '11', including pain and suffering and attendant's charges. However, the Hon'ble Supreme Court reassessed the total compensation, which was to the extent of Rs.29,42,175/-, but thereupon, deducted an amount of Rs.1 lakh, which was awarded by learned Tribunal and was already paid. Thus, net total was worked upon as Rs.28,42,175/-.

In this backdrop, advertng to the case in hand, it should be noted that injured-Raj Kumar had sustained multiple injuries, which made him crippled man, for the rest of his life. No doubt, the doctor, who had extended treatment to the injured, as such, has not been examined, but however, various witnesses have been examined, who have proved the record of treatment. The discharge summary of injured from Indian Spinal Injuries Centre has been proved as Ex.PW3/B. Perusal of the same reveals that he was got admitted in Indian Spinal Injuries Centre on 22.07.2006 and was discharged on 14.08.2006. He was diagnosed to be having Fracture L1 with paraplegia with bowel and bladder.

The treatment given mentioned that the patient was admitted and evaluated by Neuro-Surgeon for the extent of head injury. CT Scan was done which showed normal report. After thorough evaluation by Anaesthetist and Physician, Posterior decompression and stabilisation of

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chance fracture L1 done on 24.07.2006 under General Anaesthesia and that post-operative period was uneventful. Thereafter, it mentions about the stitches having removed on 07.08.2006. However, further it makes mention about evaluation on discharge, which is as follows:-

Power Hip, Knee and ankle – 0/5 bilaterally.

Sensory examination-

Bilateral complete loss of sensation below inguinal ligament.

Bowel and bladder control not presented

All cranial nerves intact.

The advice in discharge was given, to take care of bladder, bowel and back and to continue upper limbs, lower limbs and chest physiotherapy and continue rehabilitation, besides giving medication. Further, also it stated about Foleys catheter to continue and to be changed every fortnight for 15 days and opined about the review in OPD.

This type of injury sustained and advice so given also gains strength from the disability certificate, which is Ex.PW5/A. PW-5 Dr.A.K.Saini, who was member of the board of doctors for assessment of disability, has proved this certificate. He has categorically stated that the disability was 100% on account of paraplegia and he also further stated in his examination-in-chief that with this type of disability, Raj Kumar will not be able to move of his own. Such type of patients usually get bed sores and continuously need specialized nursing care. In cross-examination, he further specified that the paraplegia is permanent in nature. Paraplegia will definitely affect his earning capabilities.

Thus, it is evident that injured-Raj Kumar suffered 100% paraplegia.

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During the pendency of the appeal, the claimant had died. His LRs have been brought on record. Taking guidelines from the *Kahlon's case (supra)*, the legal representatives, as such, are entitled for the loss of estate by using multiplier method, keeping in mind the nature of injuries, treatment, expenditure incurred and loss of income.

The appellant-claimant, in the claim petition, had asserted about himself to be an agriculturalist and also indulging in the sale of milk and that his earning were Rs.10,000/- per month. However, so far as, extent of his earnings is concerned, no satisfactory evidence, to establish the earnings, as such, has come on record. In the given circumstances, in modest estimate, the earnings of the appellant-claimant are taken to be Rs.3,000/- per month. The appellant-claimant was 30 years old, at the time of the accident. Considering his age, on the count of 'future prospects', addition of 40% ought to be made. Thus, making this addition, the loss of earnings comes to be $\text{Rs.}3000 + 1200(40\%) = \text{Rs.}4,200/-$, annual whereof, comes to be **Rs.50,400/-**.

There has to be no deduction towards personal expenses, in the present case, on account of present case having been filed by the survivor of the accident, with severe injuries, resulting into permanent disability. Beneficial reference, to so conclude, is made to the decision rendered in *Raj Kumar vs. Ajay Kumar, 2011(1) SCC 343* and *Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others, 2023(3) RCR (Civil) 573*.

Looking at the age of the appellant-claimant, in view of the judgment passed in *Smt.Sarla Verma vs. Delhi Transport Corporation and*

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anr., 2009(3) RCR (Civil) 77, the suitable multiplier to be applied is '17' and, as such, the loss of earnings is assessed as **Rs.50,400x17=Rs.8,56,800/-**.

Further, it should be noticed that various bills of the treatment have been duly proved before learned Tribunal, the total whereof is **Rs.2,03,187/-**, which ought to be taken into consideration, on the count of 'medical expenditure'.

Besides the same, the claimant must have been put on highly nutritious diet, during his lifetime, after the accident and on this count, an amount of **Rs.25,000/-** is granted.

Looking at the kind of injuries suffered, the injured-claimant, definitely, ought to require future medical treatment, to be extended from time to time, on account of inevitable consequences of the injuries suffered by him, which may lead often to bed sores, which required specialized nursing care and more so, on account of change of catheter, which as observed in the treatment record Ex.PW3/A, was required to be changed every fortnight for 15 days. Considering the same, on the count of 'future medical needs', another amount of **Rs.1.5 lakh** is granted.

The injured-claimant remained admitted in the hospital for about one month and thereafter, as per the advice given, on his discharge in Ex.PW3/A, he was to make follow up visits, for review in OPD and further, for the change of catheter, as observed aforesaid and for physiotherapy and thus, must have definitely spent some amount on the transportation also. Thus, on the count of 'transportation charges', another sum of **Rs.25,000/-** is granted.

Definitely, during his lifetime, on account of injuries suffered

by the injured-claimant, he must have been looked after by a bye-stander/attendant. Though, learned counsel for the insurance company has submitted that there is no material, as such produced, on actual expenses incurred for the services of the attendant and it is argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, besides the family member, the appellant-claimant, who became complete immobile because of paraplegia, ought to be having one attendant to look after him, as there was need for assisted living. Since, no material has been produced to quantify the expenses for the attendant, making a conservative estimate, @ Rs.2000/- per month, till the date of his death, an amount of **Rs.1 lakh** is granted, towards ‘attendant charges’.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.8,56,800/-
2.	Medical Bills	Rs.2,03,187/-
3.	Nutritious diet	Rs.25,000/-
4.	Future medical needs	Rs.1,50,000/-
5.	Transportation charges	Rs.25,000/-
6.	Attendant charges	Rs.1,00,000/-
	Total	Rs.13,59,987/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.4,03,187/-** to **Rs.13,59,987/-**. On the enhanced amount of compensation i.e. $Rs.1359987-403187=Rs.9,56,800/-$, the claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced

amount of compensation. The residue terms of the impugned Award, shall remain the same.

However, the aforesaid amount, ought to be apportioned between the widow as well as two sons of the deceased. Considering the same, out of the total amount of compensation i.e. **Rs.13,59,987/-**, so worked upon, sons of the deceased namely, Vikas Yadav and Ashish Yadav, are held entitled to Rs.2.5 lakh each, whereas, widow of deceased namely Babli, is held entitled to Rs.8,59,987/-. However, the amount already paid, if any, as awarded by learned Tribunal, the same shall be reduced from the apportionment, as now made qua the legal representatives.

With the above observations, the present appeal stands allowed.

February 09, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No